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**THE PORT AUTHORITY OF NY & NJ****Law Department  
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New York, N.Y. 10003**

September 20, 2002

NEPA Task Force  
P. O. Box 221150  
Salt Lake City, UT 84112

By: E-mail, Regular Mail &amp; Fax

Re: Notice & Request for Comments on the NEPA Task Force  
(67 F. R. 45510, July 9, 2002)

To Whom It May Concern:

The Port Authority of New York & New Jersey (Port Authority) supports the creation and goals of the NEPA Task Force and appreciates the opportunity to respond to your request for comments. The Port Authority is an agency created by Compact between the States of New York and New Jersey that, operates transportation facilities in the Port of New York District. Among the facilities operated by the Port Authority are: John F. Kennedy International Airport, LaGuardia Airport, Newark Liberty International Airport; Port Newark, the Elizabeth PA Marine Terminal, the Howland Hook and Red Hook Marine Terminals, the Brooklyn PA Marine Terminal; the PATH commuter rail system; Port Authority Bus Terminal in Manhattan; the George Washington Bridge, the Staten Island Bridges, Lincoln Tunnel, and Holland Tunnel. In addition, the Port Authority owns the World Trade Center, and is one of the primary entities involved with the WTC site and Lower Manhattan transportation infrastructure. Although the Port Authority is not itself subject to NEPA, Port Authority projects have often been subject to NEPA analysis and documentation because certain approvals and/or funding from federal agencies that are subject to NEPA are required to effectuate them. Based upon its experiences with the NEPA process in these situations, the Port Authority offers the following comments to the CEQ/NEPA Task Force:

***A. Technology, Information Management, and Information Security  
(Responses to Questions 1, 2 and 5):***

The Port Authority utilizes the services of consultants, generally through the Port Authority's Engineering Department, to gather data and background studies, and to prepare NEPA documents. Consultants are also utilized for laboratory services and site remediation studies. Typically, the larger consultant firms maintain their own extensive databases that they have developed from previous projects or through publicly available

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means (i.e. regulatory agency databases, internet sources, academic reports, etc.). The larger firms also have the advantage of obtaining such data because of their prior participation in prominent, joint-venture-type projects, and the information in their databases may not be available to other consultants, regulatory agencies and/or the general public because it may be privileged information that is not applicable to any particular regulatory action.

Federal Agencies responsible for NEPA should be making efforts to collect data from Environmental Impact Statements for future use. For example, the Port Authority applied for a U.S. Army Corps of Engineers' permit to create an underwater confined disposal facility for dredged material. The EIS that was prepared contained the results of many geotechnical borings and environmental toxicity tests. The facility was never built, but the information should be placed in a database for future use. Many Corps districts maintain Geographic Information Systems that would accept this data easily. Although not currently used extensively, GIS data has shown much promise. Reliability of data remains a concern prompting the need for either quality control or access to "notes" regarding assemblage of data. Dissemination of information allowing broad public access to details of sensitive infrastructure will remain a security concern.

A preferred method of disseminating NEPA documents and comments is the Web. To the extent that these are public documents, security would not be a concern.

***B. Federal and Inter-governmental Collaboration (Responses to Questions 1 & 2):***

Generally, the greatest barrier and challenge to entering into an effective collaborative agreement among co-lead or participating agencies is that they often have conflicting (and single-purpose) mandates. A successful collaborative agreement would need to explicitly state that participating agencies must provide a *balanced* review, considering what is best in the public interest. For example, public access versus security, wetlands impacts versus economics etc. Collaboration efforts should be encouraged, with established best practices dictating uniform policies for data management and manipulations.

***C. Programmatic Analysis and Tiering (Response to Question 1):***

A Programmatic Analysis should clearly define what actions will be acceptable under a programmatic EIS, and what actions will require further environmental analysis as part of the document. Usually a programmatic EIS is prepared as an umbrella document for several other actions that are still in planning. It should be very clear what actions a programmatic EIS is supporting for construction, or for more study.

A good example of a type of issue that best lends itself to programmatic analysis is the current formulation of the New York/New Jersey Comprehensive Port Improvement Plan

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(CPIP). In order to help avoid duplication of tiered analysis, the strategy is to develop the CPIP EIS early and in parallel with the CPIP Plan, so that both documents will compliment each other. This process should help avoid excessive tiering following development of the CPIP Plan.

Also, development projects consistent with the overall land use objectives lend themselves to programmatic review, for example: passenger terminal construction or reconstruction at an airport that clearly does not increase capacity and does not cause additional environmental impact. Individual agency's interpretation, policies and procedures with respect to NEPA compliance can be an obstacle for programmatic analysis.

***D. Adaptive Management/Monitoring and Evaluation Plans (Responses to Questions 1 & 2):***

An adaptive management approach should be considered whenever a project or action is in the public interest, is economically justified, and when current tools or technology are capable of predicting only a range, and not absolute, adverse environmental impacts. However, such tools/technology would also need to predict a worst case (however improbable) scenario, be able to measure any actual adverse affects following the project or action, and demonstrate that unacceptable effects can be reversed through some subsequent action. Generally, the Port Authority supports the adaptive management approach to assessing environmental impacts. The level of public participation that would be included in implementing an adaptive management strategy would impact its development and outcome.

NEPA analyses should be structured to consider adaptive management by identifying and attempting to predict the environmental risk of future actions, and scenario based plans. For example, contaminants should be characterized by their mobility and toxicity risk and the chance of exposure. NEPA analyses should also be across media. Instead of having to separately address laws such as the Clean Air Act, the Clean Water Act, RCRA etc., there should be more work on how the impacts of a project affect the ecosystem in a more holistic way.

***E. Categorical Exclusions (Response to Questions 1, 2 & 3) & F. Additional Areas of Consideration***

In most cases, studies are not and should not be required to establish that an action can be categorically excluded.

Relative impacts, or lack thereof, should be the primary point of comparison.

The Aviation Department of the Port Authority notes that it has not identified any new categorical exclusions by the FAA, the lead agency it deals with; however, the FAA is working on this and other changes to their implementation of the NEPA

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process to develop a more streamlined approach, and the Port Authority supports their efforts. A desirable improvement would be to accelerate the process of identification and implementation of these changes.

In addition, the Port Authority finds that actions often fit the regulatory qualifications applicable to both statutory and categorical exclusions. The NEPA Task Force needs to establish specific criteria for distinguishing when such actions, or their components, will be viewed as statutorily excluded versus categorically excluded. In terms of the level of NEPA analysis that may be triggered, this is an important threshold distinction for the applicant. The Port Authority's experience is that the current regulatory framework does not provide clear distinctions or criteria to be used by the regulatory agencies that would move an action into one or the other of the exclusions when they fit into both.

The Port Authority appreciates your consideration of our comments. If you have any questions concerning them, please contact me at: (212) 435-3415 or [lcalore@panynj.gov](mailto:lcalore@panynj.gov)

Sincerely,

*Lynda Calore*

Lynda Calore  
Attorney, Real Estate &  
Environmental Law Division

## THE PORT AUTHORITY OF NEW YORK &amp; NEW JERSEY

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## FACSIMILE TRANSMITTAL SHEET

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PHONE NUMBER:	(202) 456 - 5435	PHONE NUMBER:	(212) 435 - 3415
RE:	CEQ/NEPA Task Force Notice of Request for Comments (67 F. R. 45510 (July 9, 2002))		

☐ URGENT☒ FOR REVIEW☐ PLEASE COMMENT☐ PLEASE REPLY

## NOTES/COMMENTS:

Transmitted are the Port Authority of New York and New Jersey's comments to your Notice regarding the NEPA Task Force initiatives.

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